

difference between the purchase price, or appraised value if lower, and the seller's or lessor's historical cost basis, for each month the seller or lessor has owned or leased the property.

(b) Leases shall be subject to the following purchase equivalency test based on the maximum capital return factor. The provider shall supply sufficient information to the office so as to determine the terms and conditions of a purchase that would be equivalent to the lease agreement. Such information shall include the following:

- (1) Property basis and fair market value on the initial lease effective date.
- (2) Inception date of the initial agreement between lessee and lessor.
- (3) Imputed or stated interest rate.
- (4) Duration of payments.
- (5) Renewal options.

Such purchase equivalency terms and conditions shall be utilized to calculate the capital return factor as if it were a purchase. The provisions of section 15(c) through 15(d) of this rule shall apply. The lease payments determined under this section shall be subject to the limitations under section 15(b) of this rule.

(c) Where the imputed or stated interest rate is a variable rate, it shall be recognized only if the rate is reasonable and only if such arrangement was incorporated into the lease agreement at the time of acquisition.

FOOTNOTE TO SECTION 17(c) ABOVE BUT NOT PART OF THE PROMULGATED REIMBURSEMENT RULE: REASONABLE INTEREST RATES ARE THOSE RATES THAT ARE COMPARABLE TO CURRENT MARKET RATES.

(d) All leases, rental agreements, and contracts involving the use of property shall be subject to the same limitations as owners of property. The use fee calculation for variable rate leases will be calculated in the same manner as that set forth in section 13(k) of this rule. In no event shall the capital return factor be greater than the actual lease payment.

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(e) If a provider rents, leases, or purchases facilities or equipment from a related party, the historical cost to the related party, not to exceed fair market value, shall be utilized in computing the capital return factor except as described in this section for the sale of facilities between family members.

(f) The sale of facilities between family members shall be eligible for consideration as a change of provider status transaction if all of the following requirements are met:

(1) There is no spousal relationship between parties.

(2) The following persons are considered family members:

(A) Natural parents, child, and sibling.

(B) Adopted child and adoptive parent.

(C) Stepparent, stepchild, stepsister, and stepbrother.

(D) Father-in-law, mother-in-law, sister-in-law, brother-in-law, and daughter-in-law.

(E) Grandparent and grandchild.

(3) The provider can demonstrate to the satisfaction of the office that the primary business purpose for the sale is other than increasing the established rate.

FOOTNOTE TO SECTION 17(f)(3) ABOVE BUT NOT PART OF THE PROMULGATED REIMBURSEMENT RULE: A PROVIDER CAN DEMONSTRATE TO THE SATISFACTION OF THE OFFICE THAT THE PRIMARY PURPOSE OF THE SALE OF FACILITIES BETWEEN FAMILY MEMBERS IS FOR REASONS OTHER THAN INCREASING THE ESTABLISHED RATE BY POINTING OUT THAT THE RATE TREATMENT OFFERED THROUGH THIS PLAN AND THE RATE SETTING CRITERIA LIMITS THE RATE FOR A NEW PROVIDER IN A CHANGE OF PROVIDER STATUS TRANSACTION TO THE STATEWIDE MEDIAN RATE FOR LIKE TYPE PROVIDERS OR THE PREDECESSOR PROVIDER'S RATE, WHICHEVER IS GREATER. IN ANY CASE THERE IS LITTLE OR NO OPPORTUNITY FOR A PROVIDER TO USE A FAMILY SALE TRANSACTION AS A METHOD MEANT SOLELY TO INCREASE THE FACILITY'S RATE.

(4) The transfer is recognized and reported by all parties as a sale for federal income tax purposes.

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(5) The seller is not associated with the facility in any way after the sale other than as a passive creditor.

(6) The buyer is actively engaged in the operation of the facility after the sale with earnings from the facility accruing to at least one (1) principal buyer primarily as salaries or self-employment income and not as leases, rents, or other passive income.

(7) This family sale exception has not been utilized during the previous eight (8) years on this facility.

(8) None of the entities involved is a publicly held corporation as defined by the Securities and Exchange Commission.

(9) If any of the entities involved are corporations, they must be family owned corporations, where members of the same family control the corporations through ownership of fifty percent (50%) or more of the voting stock.

(g) In order to establish an historical cost basis in the sale of facilities between family members, the buyer shall obtain a Member Appraiser Institute (MAI) appraisal, which appraisal is subject to the approval of the office. The appraisal shall be done within ninety (90) days of the date of the sale. The historical cost basis shall be the lower of the historical cost basis of the buyer or ninety percent (90%) of the MAI appraisal of facilities and equipment.

(h) If the conditions of this section are met, the cost basis and financing arrangements of the facility shall be recognized for the purpose of computing the capital return factor in accordance with this rule for a bona fide sale arising from an arm's-length transaction.

(i) If a lease of facilities between family members under subsection (f)(2) qualifies as a capitalized lease under guidelines issued in November 1976 by the American Institute of Certified Public Accountants, the transaction shall be treated as a sale of facilities between family members, for purposes of determining the basis, cost, and valuation of the buyer's capital return factor component of the Medicaid rate. (Office of

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the Secretary of Family and Social Services; 405 IAC 1-12-17)

405 IAC 1-12-18 Unallowable costs; cost adjustments; charity and courtesy allowances; discounts; rebates; refunds of expenses

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 18. (a) Charity, courtesy allowances, discounts, refunds, rebates, and other similar items granted by a provider shall not be included in allowable costs. Bad debts incurred by a provider shall not be an allowable cost.

(b) Payments that must be reported on the annual or historical financial report form that are received by a provider, an owner, or other official of a provider in any form from a vendor shall be considered a reduction of the provider's costs for the goods or services from that vendor.

(c) The cost of goods or services sold to nonpatients or nonresidents shall be offset against the total cost of such service to determine the allowable patient or resident related expenses. If the provider has not determined the cost of such items, the revenue generated from such sales shall be used to offset the total cost of such services. (*Office of the Secretary of Family and Social Services; 405 IAC 1-12-18*)

405 IAC 1-12-19 Allowable costs; wages; costs of employment; record keeping; owner or related party compensation

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 19. (a) Reasonable compensation of individuals employed by a provider is an allowable cost, provided such employees are engaged in, patient or resident care-related functions and that compensation

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amounts are reasonable and allowable under this section and sections 20 through 22 of this rule.

(b) The provider shall report using the forms or in a format prescribed by the office all patient and resident related staff costs and hours incurred to perform the function for which the provider was certified. Both total compensation and total hours worked shall be reported. Staffing limitations to determine Medicaid allowable cost shall be based on hours worked by employees. If a service is performed through a contractual agreement, imputed hours for contracted services are only required when such services obviate the need for staffing of a major function or department that is normally staffed by in-house personnel. Hours for laundry services in CRF/DD or ICF/MR facilities that are properly documented through appropriate time studies, whether paid in-house or contracted, shall not be included in calculating the staffing limitation for the facility. Hours associated with the provision of day services and other ancillary services shall be excluded from the staffing limitation.

(c) Payroll records shall be maintained by the provider to substantiate the staffing costs reported to the office. The records shall indicate each employee's classification, hours worked, rate of pay, and the department or functional area to which the employee was assigned and actually worked. If an employee performs duties in more than one (1) department or functional area, the payroll records shall indicate the time allocations to the various assignments.

(d) When an owner or related party work assignment is at or below a department head level, the hours and compensation shall be included in the staffing hours reported using the forms prescribed by the office. Such hours and compensation must be reported separately and so identified. Compensation paid to owners or related parties for performing such duties shall be subject to the total staffing limitations and allowed if the compensation paid to owners or related parties does not exceed the price paid in the open market to obtain such services by nonowners or nonrelated parties. Such compensation to owners or related parties is not subject to the limitation found in section 20 of this rule. *(Office of the Secretary of Family and*

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Social Services; 405 IAC 1-12-19)

405 IAC 1-12-20 Allowable costs; calculation of allowable owner or related party compensation; wages; salaries; fees; fringe benefits

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 20. (a) Compensation for owner, related party, individuals within management, consultants who perform management functions, or any individual or entity rendering services above the department head level shall be subject to the annual limitations described in this section. All compensation received by the parties as described in this subsection shall be reported and separately identified on the financial report form even though such payment may exceed the limitations. This compensation is allowed to cover costs for all administrative, policy making, decision making, and other management functions above the department head level. This includes wages, salaries, and fees for owner, administrator, assistant administrator, individuals within management, contractors, and consultants who perform management functions, as well as any other individual or entity performing such tasks.

(b) The maximum amount of owner, related party, management compensation for the parties identified in subsection (a) shall be the lesser of the amount under subsection (d), as updated by the office on July 1 of each year by determining the average rate of change of the most recent twelve (12) quarters of the Gross National Product Implicit Price Deflator, or the amount of patient or resident related wages, salaries, or fees actually paid or withdrawn which were properly reported to the Internal Revenue Service as wages, salaries, fringe benefits, expenses, or fees. If liabilities are established, they shall be paid within seventy-five (75) days after the end of the accounting period or such costs shall be disallowed.

(c) In addition to wages, salaries, and fees paid to owners under subsection (b), the office will allow up to twelve percent (12%) of the appropriate schedule for fringe benefits, business expenses charged to an

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operation, and other assets actually withdrawn that are patient or resident related. These expenses include fringe benefits that do not meet nondiscriminatory requirements of the Internal Revenue Code, entertainment, travel, or continuing education. Other assets actually withdrawn include only those items that were actually accrued and subsequently paid during the cost reporting period in which personal services were rendered and reported to the Internal Revenue Service as fringe benefits, expenses, or fees. If liabilities are established, they shall be paid within seventy-five (75) days after the end of the accounting period or such costs shall be disallowed.

(d) The owner, related party, and management compensation and expense limitation per operation shall be as follows:

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OWNER AND MANAGEMENT COMPENSATION

OWNER'S EXPENSE

BEDS	ALLOWANCE	(12% x Bed Allowance)
10	\$18,527	\$2,223
20	\$24,717	\$2,966
30	\$30,887	\$3,706
40	\$37,049	\$4,446
50	\$43,241	\$5,189
60	\$46,948	\$5,634
70	\$50,657	\$6,079
80	\$54,362	\$6,523
90	\$58,055	\$6,967
100	\$61,763	\$7,412
110	\$66,731	\$8,007
120	\$71,663	\$8,600
130	\$76,628	\$9,195
140	\$81,546	\$9,786
150	\$86,496	\$10,380
160	\$91,427	\$10,971
170	\$96,378	\$11,565
180	\$101,313	\$12,157
190	\$106,262	\$12,751
200	\$111,196	\$13,343
200 and over	\$111,196 plus	\$13,343 plus
	\$225 per bed over 200	\$27 per bed over 200

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This subsection applies to each provider of a certified Medicaid operation. The unused portions of the allowance for one (1) operation shall not be carried over to other operations. (*Office of the Secretary of Family and Social Services; 405 IAC 1-12-20*)

405 IAC 1-12-21 Nonstate-operated intermediate care facilities for the mentally retarded; allowable costs; compensation; per diem rate

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 21. (a) The procedures described in this section are applicable to intermediate care facilities for the mentally retarded with nine (9) or more beds only, notwithstanding the application of standards and procedures set forth in sections 1 through 20 of this rule.

(b) The per diem rate for intermediate care facilities for the mentally retarded is an all-inclusive rate. The per diem rate includes all services provided to patients by the facility.

(c) Costs related to staffing shall be limited to seven (7) hours worked per patient day. (*Office of the Secretary of Family and Social Services; 405 IAC 1-12-21*)

405 IAC 1-12-22 Community residential facilities for the developmentally disabled; allowable costs; compensation; per diem rate

Authority: IC 12-8-6-5; IC 12-15-1-10; IC 12-15-21-2

Affected: IC 12-13-7-3; IC 12-15

Sec. 22. (a) Notwithstanding the application of standards and procedures set forth in sections 1 through 20 of this rule, the procedures described in this section apply to intermediate care facilities for the mentally retarded with eight (8) or fewer beds (CRF/DD).

(b) Costs related to staffing shall be limited to the following:

Type of License	Staff Hours Per Resident Day
Sheltered living	4.5
Intensive training	6.0
Developmental Training	8.0
Child rearing	8.0
Child rearing residences with specialized programs	10.0
Basic developmental	10.0
Small behavior management residences for children	12.0

(c) Any change in staffing that exceeds the current limitations of four and one-half (4.5) hours per resident day for adults and eight (8) hours per resident day for children will require approval on a case-by-case basis, upon application by the facility. This approval will be determined in the following manner:

(1) A new or current provider of service which seeks staffing above four and one-half (4.5) hours per resident day for adults or eight (8) hours per resident day for children must first obtain approval from the DDARS, based upon the DDARS assessment of the program needs of the residents. The DDARS will establish the maximum number of staff hours per resident day for each facility, which may be less than but may not be more than the ceiling for each type of license. If a change in type of license is required to permit the staffing limitation determined by the DDARS, then the DDARS will make its recommendation to the licensing authority and convey to the office of Medicaid policy and planning the decision of the licensing authority. The office shall conduct a complete and independent review of a request for increased staffing and shall retain final authority to determine whether a rate change will be granted as a result of a change in licensure type.

(2) If a provider of services holds a current license which would permit staffing above the limitation

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